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PILLSBURY WINTHROP SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN, VA 22102

EXAMINER
SWEARINGEN, JEFFREY R

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/578,156
Filing Date: May 23, 2000
Appellant(s): LEWIS, LUNDY

Rick Toering
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/30/2007 appealing from the Office action mailed 4/30/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the

examiner which may be related to, directly affect or be directly affected by or have a bearing on the

Board's decision in the pending appeal:

U.S. Patent Application 09/577,224, filed May 23, 2000

U.S. Patent Application 09/577,225, filed May 23, 2000

U.S. Patent Application 09/577,231, filed May 23, 2000

U.S. Patent Application 09/577,232, filed May 23, 2000

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,336,139   Feridun et al.   1-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

Claims 1, 6, 8, 11, 13-14, 18, 20-23, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "a desirable state" and "when the current state of the service is undesirable" in claims 1, 8, 11, 14, 20, and 23 are relative terms which render the claims indefinite. The terms "desirable" and "undesirable" are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant failed to state what is meant by a "desirable state" and an "undesirable state".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 9-13, 15-18, and 20-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Feridun et al. (U.S. 6,336,139 B1).

In regard to claims 1, 11, 13, 21-23 and 26, Feridun disclosed:

multiple monitoring agents that each monitor a respective aspect of operation of one or more of the network components, wherein each monitoring agent detects events in the respective monitored aspect of operation and generates alarms as a function of the detected events; (column 6, lines 20-40) *and*

an alarm correlation agent that receives the generated alarms from the monitoring agents, wherein the alarm correlation agent determines a current state of the service based on the received alarms (column 8, lines 15-45) *and issues one or more instructions to autonomously*

establish a desirable state of the service when the current state of the service is undesirable

(column 8, lines 56-61; column 10, line 63 – column 11, line 10).

In regard to claims 2, 9, 15 and 24, Feridun disclosed:

>*at least one of:*

>>*an infrastructure monitoring agent to monitor operation of the network*

>*infrastructure; (column 10, lines 45-52)*

>>*a computer system monitoring agent to monitor operation of at least one*

>*computer system on the network; (column 10, lines 52-62)*

>>*a network traffic monitoring agent to monitor traffic on the network; (column 10,*

>*line 63 – column 11, line 10)*

>>*an application monitoring agent to monitor operation of at least one application*

>*on the network; (column 10, lines 27-35)*

>>*a trouble-ticketing agent to receive reports of problems by users with respect to*

>*operation of the network;*

>>*a response time monitoring agent to monitor a response time of a communication*

>*on the network;*

>>*a device monitoring agent to monitor operation of a device on the network; and*

>>*a multicomponent monitoring agent comprising an aggregate of any of the above*

>*monitoring agents. (column 10, lines 45-63)*

In regard to claim 3, Feridun disclosed:

>*the monitoring agents and the alarm correlation agent comprise reasoning agents.*

(column 9, lines 1-22)

In regard to claims 4, 10, 12, 16-17, and 25, Feridun disclosed:

>*the reasoning agents comprise one or more of:*

>>*a rule-based reasoning agent; (column 9, lines 15-40)*

>>*a model-based reasoning agent;*

>>*a state-transition graph based reasoning agent;*

> *a code book based reasoning agent; and*

> *a case-based reasoning agent.*

In regard to claim 5, Feridun disclosed:

> *an alarm repository that receives the generated alarms from the monitoring agents,*

wherein the alarm correlation agent analyzes the alarms in the alarm repository. (column 8, lines

29-45)

Claims 6 and claims 18 and 20 contained substantially the same claim limitations as claims 1 and

5.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being

unpatentable over claim 1 of U.S. Patent No. 6,430,712. Although the conflicting claims are not identical,

they are not patentably distinct from each other because the mechanisms are equivalent as shown below.

Instant Application Claim 1	6,430,712 Claim 1
Multiple monitoring agents that each monitor a respective agent of operation of one or more of the network components, wherein each monitoring	Receiving a first alarm associated with a first resource of the plurality of resources, the first resource being associated with a first domain;

agent detects events in the respective monitored aspect of operation and generates alarms as a function of the detected events; and	receiving a second alarm associated with a second resource of the plurality of resources, the second resource being associated with a second domain;
An alarm correlation agent that receives the generated alarms from the monitoring agents, wherein the alarm correlation agent determines a current state of the service based on the received alarms and	Generating a third alarm based on the first and second alarms;
issues one or more instructions to autonomously establish a desirable state of the service when the current state of the service is undesirable.	Determining a corrective action based on the first and second alarms; and providing the corrective action to at least one of the plurality of resources.

(10) Response to Argument

Applicant argues that claims 1, 6, 8, 11, 13-14, 18, 20-23, and 26 are definite under 35 U.S.C. 112, second paragraph. Applicant has claimed reaching "a desirable state" and performing functions "when the current state of the service is undesirable." There is no information within the specification to indicate any parameters that can be reasonably used by one of ordinary skill in the art to determine whether a service is in a desirable state or in an undesirable state.

Applicant makes broad references to obtaining a "desired state" at various points of the specification, but they do not shed light on what would be a "desirable state" or what factors one of ordinary skill in the art could apply to determine the desirability of a state. See for illustrative example in the specification: page 48, lines 23-25; page 50, lines 15-20.

Applicant provided an algorithm that may shed light on this issue, but the wording of the algorithm in the specification is so lacking that one of ordinary skill would find it more indefinite than the term "desirable". See specification, page 54, line 23, which indicates "Solution Status: good". See specification, page 55, line 2, which indicates "Solution status: ?".

Applicant provided a display description in the specification at page 59, lines 4-14 that may shed light on this issue. In this embodiment, the indicators of "desirability" appear to be an elevator that is "up" but is "slow".

The referencing of the specification of page 60 by Applicant points to sentences such as "It is tempting to say that the state (health) of the service is acceptable if each of the components is available 98% of the time." This seems to be the most applicable embodiment in the specification to Applicant's intended invention, but one of the ordinary skill in the art needs to be aware of what is a desirable state, not what is "tempting to say... is acceptable."

Applicant argues that Feridun failed to disclose the invention. Applicant argues that Feridun failed to disclose "an alarm correlation agent that receives the generated alarms from the monitoring agents, wherein the alarm correlation agent determines a current state of the service based on the received alarms and issues one or more instructions to autonomously establish a desirable state of the service when the current state of the service is undesirable."

Applicant admits Feridun teaches correlating events by applying a set of correlation rules against an incoming event stream. See Appeal Brief, page 8. Applicant admits Feridun's events can be considered as alarms.

Applicant argues Feridun failed to disclose how the correlated events would be processed. See for example, Feridun, column 8, lines 10-14; column 8, lines 46-61; column 9, lines 1-57; column 10, lines 5-62; column 12, lines 32-54 as multiple examples of processing correlated events. It is further noted that Applicant failed to claim how Applicant's invention processed correlated events, so this argument is irrelevant to the claim language.

Applicant failed to argue the double patenting rejection; therefore Applicant has conceded this rejection is proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer. All identified appeals are pending before the BPAI at this time, and no decisions have been issued at the time of writing this Examiner's Answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jeffrey R. Swearingen

JRS

Conferees:

JASON CARDONE
SUPERVISORY PATENT EXAMINER

ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER